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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re J.R. et al., Persons Coming Under the Juvenile Court Law.	
RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, Plaintiff and Respondent, v. V.R. et al., Defendants and Appellants.	E066395 (Super.Ct.No. RIJ1500745) OPINION

APPEAL from the Superior Court of Riverside County. Matthew C. Perantoni, Judge. Affirmed.

Elena S. Min, under appointment by the Court of Appeal, for Defendant and Appellant V.R.

Nicole Williams, under appointment by the Court of Appeal, for Defendant and Appellant M.R.

Gregory P. Priamos, County Counsel, and James E. Brown, Guy B. Pittman, and Julie Koons Jarvi, Deputy County Counsel, for Plaintiff and Respondent.

Defendants and Appellants V.R. (Mother) and M.R. (Father) appeal from the juvenile court's order terminating their parental rights as to their five children. On appeal, Mother argues (1) the juvenile court erred in finding the children were adoptable; and (2) the juvenile court erred in failing to find the beneficial exception to adoption applied.[1] On appeal, Father argues (1) the juvenile court erred when it denied the request to continue the Welfare and Institutions Code section 366.26[2] hearing to allow the Riverside County Department of Public Social Services (DPSS) to prepare the statutorily required adoption assessment report; (2) the juvenile court's findings of specific and general adoptability are not supported by substantial evidence; (3) the evidence was insufficient to sustain the jurisdictional and dispositional findings as to Father; and (4) there was insufficient evidence to support the juvenile court's dispositional order removing the children from Father's custody. We reject these contentions and affirm the judgment.

[1] Mother also joins and adopts the arguments presented by Father.

[2] All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

I

FACTUAL AND PROCEDURAL BACKGROUND

Mother and Father are the parents of nine-year-old J.R.; four-year-old M.R.; three-year-old A.R.; two-year-old G.R.; and one-year-old I.R. Mother met Father as a teenager, and they married in 2006 when she was 17 years old and he was 16 years old. Mother did not work, and Father was a welder and repaired trucks.

The family came to the attention of DPSS after Mother and her youngest child (I.R.) tested positive for amphetamine at the child's birth in July 2015. Mother was stunned at the positive test result, and reported she received prenatal care in Tijuana, Mexico. I.R. presented with normal APGAR scores and did not display any symptoms of drug withdrawal at birth. His vitals were normal, he was feeding well, and he was not crying or jittery. Mother appeared to be appropriately caring for the child and bonding with I.R.

When interviewed by DPSS, Mother denied any drug use and was surprised by the positive drug test. She initially denied a substance abuse history but later reported using marijuana and methamphetamine from the ages of 16 to 18 before the children were born. She agreed to submit to another drug test, and again tested positive for amphetamine and methamphetamine.

Mother reported that the children were healthy and happy and that she and Father had a good relationship. She denied any criminal history, incidents of domestic violence, or having mental health issues. She reported that she suffered from headaches and had

obtained medication in pill form from Mexico. She, however, was unable to provide the name of the medication or her treating doctor's name. Mother was resistant to having DPSS conduct a walkthrough of her home as well as seeing the children. She eventually broke down, gave her consent, and claimed DPSS would not approve the home because the family resided in the maternal grandparents' garage.

Father was also interviewed. He claimed the child abuse referral was the result of the delivery doctor maliciously retaliating against him and Mother. He denied Mother used drugs, believing the positive drug test was from the medication Mother received from Mexico, and indicated the children were healthy and received good care. He admitted using marijuana and being arrested previously for burglary, shoplifting, driving without registration, and failing to appear in court. He denied any domestic violence with Mother and any medical or mental health issues.

DPSS visited the maternal grandparents' home and found it clean and organized. There were toys and some children's clothing, although not enough clothes for five children. There also were no beds or cribs for the children and no diapers or formula in the home. J.R. was in the home at the time and appeared healthy. Father was also home, and became very upset at the social worker. Father and the maternal grandmother declined to provide DPSS access to the children's provisions and belongings, as well as the garage where the family resided. He also refused to drug test, and reported the other children were at the paternal grandmother's home.

DPSS visited the paternal grandmother's home and found it also to be clean and organized. The three other children appeared healthy and free from any marks or bruises. The paternal grandmother and aunt reported no concerns about the parents' care of the children; they never saw the children abused or neglected by the parents. They stated the family lived at the maternal grandparents' home, but the children were staying with the paternal grandmother while Mother was in the hospital giving birth. DPSS attempted to take all three children into protective custody. However, Father and the relatives were uncooperative.

On July 15, 2015, DPSS filed section 300 petitions on behalf of the children pursuant to section 300, subdivision (b) (failure to protect), based on Mother's positive drug test, Father's abuse of marijuana and caring for the children while under the influence, the parents' inability to provide for five young children, and the parents' failure to make their home available for assessment.[3]

The children were formally detained at the July 20, 2015 detention hearing, and the parents were provided with visitation and services. Mother was ordered to drug test and provide a hair follicle test, and DPSS was ordered to assess relatives for placement.

DPSS interviewed Mother and Father separately on July 28, 2015. Mother again stated that the positive drug test was false and stated that Father did not smoke marijuana around her or their children. Mother, however, admitted that they had unstable housing

[3] An amended information was filed on July 17, 2015, indicating all five children had been detained.

and that they resided in her parents' garage. Mother was unemployed and denied receiving any government assistance. Father also stated the positive drug tests were false and denied smoking marijuana or being under the influence around the children. Father reported he and Mother provided everything the children needed, and admitted they were experiencing a tough time financially and were working on getting to a better place for the children. Father was employed as a welder, and claimed he earned too much money to qualify for government assistance.

A walkthrough of the maternal grandparents' garage revealed that the garage was detached from the main house. There was a big bed and no other sleeping items for the children, such as beds, cribs, or basinets. There was a swamp cooler to maintain appropriate temperature, a make-shift closet, dressers that contained the parents' and children's clothing, and family pictures on the wall. The parents maintained that the children slept in the grandparents' home; however, there were inadequate beds or cribs for five children in the home.

On July 16, 2015, DPSS completed a referral to Family Preservation Court (FPC) on behalf of Mother. On July 28, 2015, Mother reported that she had completed an initial assessment at FPC and was informed she did not qualify for the program. FPC informed DPSS that Mother did not qualify for the program because Mother claimed she had not used illicit drugs in eight years; that the positive drug test result was due to medication she took from Mexico; and because she was not honest during the assessment. On August 4, 2015, DPSS discussed the case plan with Mother and her need to participate in

a substance abuse treatment program. DPSS also referred Mother to several substance abuse programs; however, Mother was not receptive to the information provided and stated she did not need to participate in substance abuse treatment. Mother also failed to drug test and provide a hair follicle test, claiming she did not have identification to complete DPSS's request. Father also failed to drug test, claiming he needed two days' notice as per his employer; and when DPSS provided Father with two days' notice, he stated that DPSS needed to send his employer a letter.

The children were initially placed in two separate foster homes—the oldest three children were placed together, and the youngest two children were placed in a separate home. A few days after the detention hearing, G.R. was moved to the same foster home as her older siblings. I.R., however, remained in a separate foster home because his siblings' foster home was not approved for infants. The children appeared healthy and happy in foster care, and were all developmentally on track for their respective ages. J.R. reported his foster mother was " 'good' " and that she made him feel safe. He also stated that Father told him DPSS wanted the family to be apart and that he wanted Lego's and to return home. Father also told J.R. that they would be home by August 11, 2015. While the social worker was interviewing M.R., J.R. expressed his protective nature over his younger sister and yelled out that M.R. did not know anything. The parents reported that J.R. wanted to return home and he tried to hold his emotions in; that the children were doing well in their foster home; that the foster mother took good care of the

children; M.R. cried following visits; and that G.R.'s happiness was being with her siblings.

The parents participated in weekly visits. For the most part, the visits appeared to be appropriate. However, on one visit, law enforcement was called after Mother became angry and made threatening gestures towards the social worker. In addition, based on J.R.'s statements, Father was discussing placement issues with the children during visits.

The jurisdictional/dispositional hearing was held on August 11, 2015. At that time, the parents waived their rights and submitted to the allegations in the amended petition.[4] The court found the allegations in the amended petition true and declared the children dependents of the court. The children were removed from parental custody and the parents were provided with reunification services. The court informed the parents that the children formed a sibling group because at least one child in the group was under the age of three at the time of initial removal and that failure to participate and make substantive progress in their case plan may result in the termination of their services within six months from the date the children entered foster care. Upon inquiry, the parents indicated they understood the six-month limitation. The parents were ordered to participate in a substance abuse program, counseling, a parenting program, and to randomly drug test.

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[4] In regard to the case plan, Father's counsel objected to the drug testing schedule as proposed due to Father's employment, and wanted Mother's case plan to address postpartum depression. Father's counsel also clarified some errors in the report, noting the maternal grandfather's correct name and that Mother never denied she had postpartum depression.

By the six-month review hearing, DPSS recommended terminating the parents' reunification services. They continued to live in the maternal grandmother's garage; they were both unemployed; and they were not financially stable. Father worked side jobs earning approximately $300 a month. Mother worked some cleaning jobs earning approximately $120 a month. Father stated he had a difficult time finding a job because he had a felony on his record. He continued to have two active warrants. Despite being provided with referrals and services, both parents also failed to participate in their case plan and were believed to be actively abusing controlled substances. Mother was attending the FPC program but was not in compliance. She tested positive off and on throughout the program and did not seem committed to the program. She admitted she relapsed and tested positive on September 5, 2015. She tested positive 11 times for drugs from August to November 2015, and was discharged from the program in November 2015. She also did not participate in a parenting program or counseling. Father failed to enroll in any services, and lost his job sometime in September or November. Father gave excuses for his non-participation. The social worker observed that the parents' lack of enthusiasm, apathy, and dependence on family support showed they were incapable of meeting their own needs much less those of their five young children.

The parents were provided with supervised visits twice a week. Initially, the parents were not very involved with the children during visits due to a lot of other relatives showing up with the parents. Once the social worker advised the parents that the visits were for them to bond with their children, the parents invited fewer family

members to visits and were better able to engage with the children and care for them during the visits. The parents were interactive with the children and helped J.R. with his homework. The visits remained supervised because the parents did not comply with their case plan.

The children were thriving and developing well emotionally, physically, and developmentally in their foster homes. I.R. remained in a separate home until he joined his four siblings in their foster home on February 5, 2016. The caregivers were meeting the children's physical, medical, emotional, and social needs, and were willing to provide the children with stability and permanency. The older children had developed a very positive, strong, and healthy attachment with their caregivers whom they affectionately referred to as " 'ma and dad.' " DPSS believed the children were adoptable.

The contested six-month review hearing was held on February 25, 2016. At that time, Mother requested continuation of her reunification services to the 12-month date because she had enrolled in a substance abuse program, attended individual counseling, enrolled in a parenting program, and submitted to drug testing. Father made similar arguments and noted the children had only recently been placed together in the same foster home. He also asserted that since most of the children were over the age of three, he and Mother should be allowed six additional months of services. Following further argument, the juvenile court terminated services for the parents, finding the children are a sibling group and three of the children were under the age of three at the time of

removal.[5] The court advised the parents of their appellate writ rights, and set a section 366.26 hearing.

On April 12, 2016, the parents reported that their circumstance had not changed, and they continued to live together rent free in the maternal grandmother's garage. Father stated that he was working full time as a welder earning $11 an hour and that he also worked side jobs earning approximately $300 per month. Mother reported that she was looking for work, and continued to do some cleaning jobs earning approximately $120 per month.

Meanwhile, all five children were in a safe and caring environment and their immediate needs were being met. J.R. was described as a happy, smart, friendly, active, loving, and well-mannered eight-year-old child who enjoyed school and playing with his siblings. He had no difficulty expressing his thoughts and feelings and continued to become more independent. J.R. appeared to be emotionally stable and had a strong attachment to his foster mother whom he affectionately referred to as " 'mom.' " J.R. also reported that he was very happy in his foster home; that he felt safe with his caregiver; and that he and his siblings were treated very well by the caregiver and her extended family. The other children were also described as happy children who were thriving developmentally, emotionally, and physically. They had formed a very positive

[5] At the time of removal, J.R. was eight years old, M.R. was three years old, A.R. was two years-old, G.R. was a year old, and I.R. was a newborn.

and healthy relationship with their caregiver and siblings. The caregiver wanted to adopt all five children and provide them with a loving, stable, and supportive home.[6]

The parents continued to visit the children twice a month. The visits remained appropriate with no concerns. Other relatives, including the maternal grandmother before she passed away in January 2016, and the paternal uncle and his family, also continued to visit the children. The children enjoyed the visits with their relatives.

DPSS requested that the section 366.26 hearing be continued 120 days in order for the preliminary home study to be completed because there had been a delay in the assignment of an adoption social worker to the matter. DPSS recommended that the children remain in their home with adoption as their permanent plan.

On June 27, 2016, Mother and Father separately filed requests to change court order under section 388 as to all five children. The parents sought to have the children placed in their care, have additional reunification services, or to have the children placed with the paternal grandmother. In support of their section 388 petitions, the parents asserted they maintained regular contact and visitation with the children, they regularly attended Alcoholics Anonymous/Narcotics Anonymous (AA/NA) meetings, and the children were very bonded with both of them.

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[6] DPSS completed relative assessments on three relatives; however, the relatives failed to follow through on completing the required paperwork. Another relative, the paternal great aunt, also expressed an interest in having the children; however, she was not able to adopt all five children and inquired whether the children could be split up amongst relatives. On April 12, 2016, the parents reported that they did not have any relatives that were willing to adopt their children and expressed their desire to have the children's present caregiver adopt the children.

A combined hearing on the parents' section 388 petitions and the section 366.26 hearing was held on June 27, 2016. Following testimony from Mother, the juvenile court denied the section 388 petitions finding a lack of evidence of changed circumstances and because the requested relief was not in the children's best interest.

At the hearing, DPSS requested that the matter be continued for 120 days to file a preliminary adoption assessment. DPSS also argued that if the court was not inclined to grant the continuance, then the court should terminate parental rights with a permanent plan of adoption. Mother and Father joined in the request to continue the matter for the adoption assessment. Minors' attorney did not join in the request. The court denied the request for a continuance, finding no good cause to continue the section 366.26 hearing. The court noted that an assessment is not required under California law to terminate parental rights, only a finding the children are adoptable, and that the court could make that finding based upon the information before the court. Thereafter, following further argument, the court found that the children were likely to be adopted, both generally and specifically, and terminated parental rights. The court also concluded that there were no exceptions to the termination of parental rights. This appeal followed.

II

DISCUSSION

A. *Denial of Continuance*

Father contends that the juvenile court erred when it denied the request to continue the section 366.26 hearing to allow DPSS to prepare the statutorily required adoption assessment report.

The juvenile court may grant a continuance only if there is a showing of good cause for the period of time shown to be necessary and the continuance is not contrary to the child's best interest. (§ 352, subd. (a).) The court must " 'give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements.' " (*In re J.I.* (2003) 108 Cal.App.4th 903, 912.) Courts have interpreted the policy behind section 352 as "an express discouragement of continuances. [Citation.]" (*In re Karla C.* (2003) 113 Cal.App.4th 166, 179.) We reverse an order denying a continuance only on a showing of an abuse of discretion. (*In re Ninfa S.* (1998) 62 Cal.App.4th 808, 811.)

Here, DPSS requested the section 366.26 hearing be continued for 120 days to complete and file a preliminary adoption assessment home study report because there had been a delay in the assignment of an adoption social worker. Both Mother and Father joined in the request. The juvenile court denied the request, finding no good cause to continue the section 366.26 hearing. The court stated that it could make the finding the

children are likely to be adopted based on the evidence before the court and that an assessment was not required under California law.

Whenever a juvenile court refers a dependency case for a section 366.26 hearing, the court is required to direct the social services department to prepare an assessment as part of its report to the court. (*In re Valerie W.* (2008) 162 Cal.App.4th 1, 11 (*Valerie W.*).) "The assessment report is 'a cornerstone of the evidentiary structure' upon which the court, the parents and the child are entitled to rely. [Citations.] The [department] is required to address seven specific subjects in the assessment report, including the child's medical, developmental, scholastic, mental, and emotional status. [Citation.] In addition, the assessment report must include an analysis of the likelihood that the child will be adopted if parental rights are terminated. [Citations.]" (*Id*. at p. 11.) The assessment report must also contain: " 'A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption . . . .' [§ 366.21, subd. (i)(1)(D).]" (*Id*. at p. 12.)

The purpose of the assessment report is to provide the juvenile court with information necessary to determine whether adoption is in a child's best interest. (See *In re Dakota S.* (2000) 85 Cal.App.4th 494, 496 (*Dakota S.*).) An assessment report need not be entirely complete as long as it is in substantial compliance with statutory

requirements. (*In re John F.* (1994) 27 Cal.App.4th 1365, 1378.) Even "the absence of the statutorily required preliminary assessment [will] not [necessarily] result in a miscarriage of justice [where] the juvenile court was presented, in other forms, the information that would have been contained in the preliminary assessment." (*Dakota S.*, at pp. 502-503.)

We find *Dakota S.*, *supra*, 85 Cal.App.4th 494 instructive. There, the mother contended that the juvenile court's guardianship order had to be reversed because the department failed to prepare a statutorily required preliminary assessment report. The appellate court concluded "that the failure to provide the juvenile court with a preliminary assessment report is subject to the harmless error provision of our state Constitution (Cal. Const., art. VI, § 13) when the court received, in other forms, the information that would have been contained in the preliminary assessment." (*Id*. at p. 503.)

Here, the denial of a continuance in order for the assessment to be prepared was harmless error. The many reports filed in the case, including one prepared for the section 366.26 hearing, informed the court that the children were happy, healthy, well-adjusted, and lacked any physical or emotional disabilities. Father does not dispute this assessment. In fact, the parents admitted that the children were happy and well cared for in their caregiver's home and that they wanted to have the children's present caregiver adopt the children. DPSS's failure to assess the caregiver's home study did not prevent

the court from receiving sufficient information to determine whether the children were adoptable. Any error was harmless.

Relying on *In re Crystal J.* (1993) 12 Cal.App.4th 407 (*Crystal J.*), Father asserts that the parties were deprived of due process and an opportunity to fully prepare at the section 366.26 hearing without the assessment report.

The appellate court in *Crystal J.*, 12 Cal.App.4th 407, at pages 412-413 explained: "Due process requirements in the context of child dependency litigation have similarly focused principally on the right to a hearing and the right to notice. (*In re B.G.* (1974) 11 Cal.3d 679, 689 . . . [failure to give mother notice of hearing was a deprivation of due process].) A meaningful hearing requires an opportunity to examine evidence and cross-examine witnesses, and hence a failure to provide parents with a copy of the social worker's report, upon which the court will rely in coming to a decision, is a denial of due process. [Citation.] Where an investigative report is required prior to the making of a dependency decision, and it is *completely* omitted, due process may be implicated because a cornerstone of the evidentiary structure upon which both the court and parents are entitled to rely has been omitted. [Citation.]"

Here, the juvenile court's findings of adoptability did not hinge on an adoption assessment report. The report the social worker prepared for the section 366.26 hearing provided substantial evidence of adoptability, as discussed below. And even if there was a due process violation, it was harmless beyond a reasonable doubt because the

section 366.26 hearing report established the children were likely to be adopted. (*Dakota S.*, *supra*, 85 Cal.App.4th at p. 503; *Chapman v. California* (1967) 386 U.S. 18, 24.)

B. *Adoptability Findings*

The parents argue there was insubstantial evidence to support the juvenile court's finding the children were generally and specifically adoptable.

A finding of adoptability requires "clear and convincing evidence of the likelihood that adoption will be realized within a reasonable time. [Citation.]" (*In re Zeth S.* (2003) 31 Cal.4th 396, 406 (*Zeth S.*); § 366.26, subd. (c)(1).) Although the juvenile court must find adoptability by clear and convincing evidence, "it is nevertheless a low threshold: The court must merely determine that it is 'likely' that the child will be adopted within a reasonable time. [Citations.]" (*In re K.B.* (2009) 173 Cal.App.4th 1275, 1292.)

The question of adoptability focuses on whether the child's age, physical condition, and emotional health make it difficult to find a person willing to adopt that child. (*Zeth S.*, *supra*, 31 Cal.4th at p. 406.) A specific adoptive family need not be identified in order to find it likely a child will be adopted within a reasonable time. (*In re Jennilee T.* (1992) 3 Cal.App.4th 212, 223, fn. 11 [to prove adoptability, there need not be proposed adoptive parents " 'waiting in the wings' "].) In a case where the child is considered generally adoptable, the court does not look at the suitability of a prospective adoptive home. (*Valerie W.*, *supra*, 162 Cal.App.4th at p. 13.) But if the finding of adoptability is based entirely on the fact that a specific family has indicated a willingness to adopt the child, "the trial court must determine whether there is a legal impediment to

adoption. [Citation.]" (*In re Carl R.* (2005) 128 Cal.App.4th 1051, 1061; see *In re Helen W.* (2007) 150 Cal.App.4th 71, 80 [where adoptability finding is based solely on a particular caretaker's willingness to adopt the child, "the analysis shifts from evaluating the characteristics of the child to whether there is any legal impediment to the prospective adoptive parent's adoption and whether he or she is able to meet the needs of the child"].)

Specific adoptability bears on general adoptability and likelihood of being adopted but is not determinative. " 'A prospective adoptive parent's . . . interest in adopting is evidence that the child's age, physical condition, mental state, and other matters relating to the child are not likely to discourage others from adopting the child.' [Citation.] [¶] In other words, '[w]hile, generally, the present existence or nonexistence of prospective adoptive parents is, in itself, not determinative, it is a factor in determining whether the child is adoptable.' " (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1526.)

Similarly, general adoptability bears on the ultimate question whether the child is likely to be adopted (§ 366.26, subd. (c)(1)) but likewise is not determinative. "[T]he law does not require a juvenile court to find a dependent child 'generally adoptable' before terminating parental rights. All that is required is clear and convincing evidence of the likelihood that the dependent child will be adopted within a reasonable time. [Citations.] The likelihood of adoptability *may* be satisfied by a showing that a child is *generally* adoptable, that is, independent of whether there is a prospective adoptive family ' " 'waiting in the wings.' " ' " (*In re A.A.* (2008) 167 Cal.App.4th 1292, 1313.)

In reviewing the juvenile court's finding of adoptability, we must determine "whether the record contains substantial evidence from which a reasonable trier of fact could find clear and convincing evidence that [the child] was likely to be adopted within a reasonable time." (*In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1562.) We give the lower court's finding of adoptability the benefit of every reasonable inference and resolve any evidentiary conflicts in favor of the judgment. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) Likewise, we do not assess the credibility of any witnesses, nor do we weigh the evidence. (*In re R.C.* (2008) 169 Cal.App.4th 486, 491.)

Here, substantial evidence supports the juvenile court's finding the children were both generally and specifically adoptable and that they were likely to be adopted within a reasonable time. The children's caregiver desired to adopt the children, so they were specifically adoptable. There was also substantial evidence they were adoptable because of general characteristics. As previously noted, whether the children are generally adoptable rests on such factors as their age, cognitive ability, health, and sociability. " 'A child's young age, good physical and emotional health, intellectual growth and ability to develop interpersonal relationships are all attributes indicating adoptability.' " (*In re I.W.*, *supra*, 180 Cal.App.4th at p. 1526.) The children's positive personal qualities made them generally adoptable. They were happy, doing very well developmentally, physically and mentally, in their caregiver's home. That constituted substantial evidence. In addition, the children had strong, healthy attachments to their caregiver, and their

caregiver was willing to adopt the children and provide them with a safe, loving, and stable home.

Mother argues that the children were not generally likely to be adopted because they were a large sibling group with one of the children having been exposed to drugs. Father also asserts that the size of the sibling group and ties with one another "belie a finding of general adoptability." For support, the parents rely on *In re B.D.* (2008) 159 Cal.App.4th 1218 (*B.D.*)

The parents' argument fails both factually and legally. It is factually without merit because the juvenile court never declared the children to be adoptable only as a sibling group. It is also legally without merit. Because, as this court has previously held, the focus of the adoptability inquiry is on the "adoptability of a child as an individual" (*In re I.I.* (2008) 168 Cal.App.4th 857, 872 (*I.I.*)), whether a child is part of a sibling group is not relevant to whether he or she is generally adoptable (*id*. at pp. 871-872 & fn. 3). Although *B.D.* contains language suggesting the contrary (*B.D.*, *supra*, 159 Cal.App.4th at p. 1233 [discussing sibling group of five in assessing whether the children in that case were generally and specifically adoptable]), *B.D.* was a case involving specific adoptability where two of the children in that case had behavioral problems rising to the level of developmental delays, and a third had a major depressive disorder. (*Id*. at p. 1223.) Such is not the case here. Furthermore, a child exposed to substances in utero may be found generally adoptable. (*In re R.C.*, *supra*, 169 Cal.App.4th at p. 492.) Moreover, I.R.'s vitals were reported as normal at birth, and he was not crying or jittery

despite testing positive for amphetamine at birth. As stated above, all five children were generally adoptable because of their general characteristics. They were all described as happy and friendly children with no developmental, educational, physical, or emotional problems. Contrary to the parents' assertions, the children were generally adoptable.

The parents also argue that DPSS provided no information about its efforts to identify a prospective adoptive parent other than the children's current caregiver. However, as this court has stated, "Since it is not even necessary that one prospective adoptive home be identified before a child may be found adoptable, a fortiori, it is not necessary that backup families be identified." (*I.I.*, *supra*, 168 Cal.App.4th at p. 870.) " ' "Usually, the fact that a prospective adoptive parent has expressed interest in adopting the minor is evidence that the minor's age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the minor. In other words, a prospective adoptive parent's willingness to adopt generally indicates [that] the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent *or by some other family*." [Citation.]' [Citation.]" (*Ibid*.)

Regarding specific adoptability, the parents argue that there was no evidence about the caregiver (or caregivers) since no adoption home study was prepared. Mother also asserts that the record is "unclear" as to "whether one or more individuals were interested in adopting the children," because at times DPSS referred to a single caregiver, while at other times, it referenced more than one caregiver. Mother therefore suggests that it was unknown who was actually interested in adopting the children. The parents rely on *In re*

Jerome D. (2000) 84 Cal.App.4th 1200 (*Jerome D.*) and *Valerie W.*, *supra*, 162 Cal.App.4th 1.

At this stage, however, such considerations are immaterial in a case in which, like this one, our attention is not called to any claim before the juvenile court of a legal impediment to adoption such as those statutory impediments set forth in Family Code sections 8601-8605 and 8712, subdivision (c)(1). (See *In re G.M.* (2010) 181 Cal.App.4th 552, 561-564 [discussing Family Code sections 8601-8603].) In such a case, "[q]uestions regarding an individual's suitability to adopt are 'reserved for the subsequent adoption proceeding,' not the section 366.26 hearing at which parental rights may be terminated." (*In re G.M.*, at p. 563.) " 'General suitability to adopt is a subjective matter which does not constitute a legal impediment to adoption. If inquiry into the suitability of prospective adoptive parents were permitted in section 366.26 hearings, we envision that many hearings would degenerate into subjective attacks on all prospective adoptive families in efforts to avoid termination of parental rights. Such a result is not envisioned by the statutory scheme.' " (*Ibid.*)

"If the child is considered generally adoptable, we do not examine the suitability of the prospective adoptive home." (*In re Carl R.*, *supra*, 128 Cal.App.4th at p. 1061.) Because there is substantial evidence that the children are generally adoptable, whether they are specifically adoptable—that is, whether the caregivers are suitable adoptive parents—does not matter. (*Id.* at pp. 1061-1062; *In re A.A.*, *supra*, 167 Cal.App.4th at p. 1313.) For these reasons, *In re Josue G.* (2003) 106 Cal.App.4th 725, held the inquiry

"as to whether a child is likely to be adopted does not focus on the adoptive parents, but rather, on the child." (*Id*. at p. 733.) Thus, the parents' concerns about the suitability of the caregiver do not undermine the juvenile court's finding of adoptability. The lower court's finding of adoptability was not based entirely on the fact that a specific family had indicated a willingness to adopt the children. Indeed, the court stated, "These are adoptable children whether or not these children are adopted by the current caretakers."

The parents' reliance on *Jerome D.*, *supra*, 84 Cal.App.4th 1200 and *Valerie W.*, *supra*, 162 Cal.App.4th 1 to support their adoptability contentions are without merit. In *Jerome D.*, the lower court's finding of adoptability for a child was premised entirely on the willingness to adopt by an individual whose suitability for adoption had not been assessed. (*Jerome D.*, at p. 1205.) There was evidence that the person willing to adopt the child was not suitable. The reviewing court concluded that it could not affirm on the basis that the child was generally adoptable because the adoption assessment lacked important information about the child's history, such as details about his mental and physical health, the care and treatment of his prosthetic eye, and his close relationship with his mother. (*Ibid*.)

The present situation is not similar to the facts in *Jerome D.*, *supra*, 84 Cal.App.4th 1200. The juvenile court in *Jerome D.* did not make a finding that the minor was generally adoptable; rather, its finding of adoptability was based on the willingness of the mother's former boyfriend to adopt the child. (*Id*. at p. 1205.) In contrast, here, the lower court's finding was that the children are generally and specifically adoptable,

not entirely based on the fact that a specific family had indicated a willingness to adopt the children; thus, our review of the record is different. Furthermore, contrary to the present situation, the minor in *Jerome D.* had a close relationship with his mother; the child had enjoyed unsupervised overnight visits in his mother's home; and no social worker had specifically addressed the minor's special needs, the care of his prosthetic eye, and his relationship with his biological mother. Moreover, unlike here, the prospective adoptive parent had "serious shortcomings as a caretaker." (*Jerome D.*, *supra*, at p. 1208.) Thus, the posture and the facts of the present case distinguish it from *Jerome D.*

Similarly, *Valerie W.*, *supra*, 162 Cal.App.4th 1 is distinguishable from this case. There, the court reversed the termination of parental rights due to insufficient evidence of adoptability. (*Id*. at p. 4.) But there the prospective adoptive parents did not know about "a serious genetic or neurological disorder" for which the child had not yet been tested. (*Id*. at p. 14.) Moreover, the agency's report was defective for failure to assess the prospective adoptive parents' eligibility and commitment to adopt. Such is not the case here. Further, in *Valerie W.* the deficiencies identified in the assessment report went primarily to the suitability of the prospective parents and whether there were legal impediments to adoption. Here, the record supports a finding of general and specific adoptability with a focus on the children, not the potential adoptive parents. Since we have upheld the finding that the children are adoptable, the parents cannot prevail on their contentions relating to the prospective adoptive home.

C. *Parental-Beneficial Relationship Exception*

Mother contends the juvenile court erred in finding the beneficial parent-child relationship exception of section 366.26, subdivision (c)(1)(A), did not apply to preclude the termination of parental rights. We disagree.

This "may be the most unsuccessfully litigated issue in the history of law." (*In re Eileen A.* (2000) 84 Cal.App.4th 1248, 1255, fn. 5, overruled on other grounds in *Zeth S.*, *supra*, 31 Cal.4th at pp. 413-414.) While it can have merit in an appropriate case (e.g., *In re S.B.* (2008) 164 Cal.App.4th 289, 296-301), this is not such a case.

In general, at a section 366.26 hearing, if the juvenile court finds that the child is adoptable, it must terminate parental rights. (§ 366.26, subds. (b)(1), (c)(1).) This rule, however, is subject to a number of statutory exceptions (§ 366.26, subds. (c)(1)(A) & (c)(1)(B)(i)-(vi)), including the beneficial parental relationship exception, which applies when "termination would be detrimental to the child" (§ 366.26, subd. (c)(1)(B)) because "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).)

"When applying the beneficial parent-child relationship exception, the court balances the strength and quality of the parent-child relationship in a tenuous placement against the security and sense of belonging that a stable family would confer on the child. If severing the existing parental relationship would deprive the child of 'a substantial, positive emotional attachment such that the child would be greatly harmed, the

preference for adoption is overcome and the natural parent's rights are not terminated.' [Citation.]" (*B.D., supra,* 159 Cal.App.4th at pp. 1234-1235.)

" '[F]or the exception to apply, the emotional attachment between the child and parent must be that of parent and child rather than one of being a friendly visitor or friendly nonparent relative, such as an aunt.' [Citation.]" (*In re Jason J.* (2009) 175 Cal.App.4th 922, 938.) " 'A biological parent who has failed to reunify with an adoptable child may not derail adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the parent. [Citation.] A child who has been adjudged a dependent of the juvenile court should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be *beneficial to some degree*, but that does not meet the child's need for a parent.' [Citation.]" (*Id.* at p. 937.) Even a "loving and happy relationship" with a parent does not necessarily establish the statutory exception. (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1419.) "The age of the child, the portion of the child's life spent in the parent's custody, the 'positive' or 'negative' effect of interaction between parent and child, and the child's particular needs are some of the variables which logically affect a parent[-]child bond." (*In re Autumn H., supra,* 27 Cal.App.4th at p. 576.)

The parent contesting the termination of parental rights bears the burden of showing both that a beneficial parental relationship exists and that severing that relationship would result in great harm to the child. (*In re Bailey J.* (2010) 189

Cal.App.4th 1308, 1314-1315.) A juvenile court's finding that the beneficial parental relationship exception does not apply is reviewed in part under the substantial evidence standard and in part for abuse of discretion. The factual finding, i.e., whether a beneficial parental relationship exists, is reviewed for substantial evidence, while the court's determination that the relationship does or does not constitute a "compelling reason" (*In re Celine R.* (2003) 31 Cal.4th 45, 53) for finding that termination of parental rights would be detrimental is reviewed for abuse of discretion. (*In re Bailey J.*, *supra*, at pp. 1314-1315; accord, *In re K.P.* (2012) 203 Cal.App.4th 614, 621-622.)

Although Mother had consistently visited the children and the visits were appropriate, Mother has failed to show that such a strong bond existed that it would be detrimental to the children to terminate parental rights. Mother claims that the children recognized her; ran to her, kissed her, hugged her, and called her " 'mommy' " during visits; and that J.R. tried to hold his emotions in and M.R. cried after visits. That, however, is not the standard. Rather, the juvenile court must look at whether the children are bonded to the parents; then it must weigh that bond (if any) against the benefit of adoption by the prospective adoptive caregiver.

There was no evidence that any child would be harmed, much less greatly harmed, by termination of parental rights. The children's primary attachment was with their caregiver. The four older children had been placed with their caregiver since July 2015, and except for J.R., were toddlers when placed in the prospective adoptive home. The four older children had resided solely in the prospective adoptive home for approximately

12 months from the initial removal to the section 366.26 hearing. The children were eight, three, two, one, and newborn when they were removed from parental custody. The youngest child, I.R., was placed with his siblings in the prospective adoptive home in February 2016, and had never resided with Mother. Although when he was first removed from parental custody, J.R. had stated he wanted to return home, he later reported that he felt safe and well cared for by his caregiver and he had developed a strong attachment to his caregiver to whom he affectionately referred to as " 'mom.' " In fact, all the children were thriving emotionally, educationally, and developmentally in the prospective adoptive home, and had developed a healthy and positive relationship with the caregiver.

Although Mother had visited the children with relatives, had shown her love to the children, and the visits went well, the evidence regarding Mother's visitation in no way showed that she occupied a parental role in the children's lives. Rather, Mother's interactions with the children appeared to be more akin to a friendly visitor or non-parent relative, such as an aunt. Initially, the parents were not very involved with the children during visits due to many relatives also visiting with the children. However, after being advised the visits were for the parents to bond with their children, the parents invited fewer relatives, and were observed to be more attentive to the children. It does not appear the children were particularly upset when the visits ended, or that they were particularly anxious to visit Mother.

While there is some evidence supporting a finding of a positive relationship between Mother and the children, there is also evidence supporting a reasonable

conclusion that the children would gain a greater benefit from being placed in a permanent adoptive home. Mother simply did not meet her burden to show that the bond between her and the children was so strong and beneficial to the children that it outweighed the benefit the children would receive from having a stable, adoptive home. As the record clearly shows, the children were bonded to their caregiver and interacted with her as their parental figure. The children were doing very well in their prospective adoptive home and they were emotionally stable there. The children were very attached to their caregiver and looked to her for comfort, love, and safety, and the caregiver was committed to providing a permanent, stable, loving home for the children.

We conclude that the beneficial parental relationship exception under section 366.26, subdivision (c)(1)(B)(i), did not apply here.

D. *Jurisdictional and Dispositional Findings*

Father asserts that the evidence was insufficient to sustain the jurisdictional and dispositional findings pertaining to him. He believes that he can challenge both jurisdiction and disposition in this appeal from the section 366.26 hearing because he was not advised of his right to file a notice of appeal following a contested jurisdictional/dispositional hearing, relying on California Rules of Court, rule 5.590, subdivision (a).[7]

A disposition order is the first appealable order in a dependency case. (§ 395, subd. (a)(1); see *In re T.W.* (2011) 197 Cal.App.4th 723, 729.) And an order terminating

[7] All additional references to rules are to the California Rules of Court.

services after a six-month review hearing, where a court does not set a section 366.26 hearing, is appealable. (§ 395, subd. (a)(1); *Wanda B. v. Superior Court* (1996) 41 Cal.App.4th 1391, 1395-1396.) But an order setting a section 366.26 hearing is not immediately appealable. Appellate review of that order must first be sought by an extraordinary writ to preserve a right to appeal. (§ 366.26, subd. (l).) Here, Father did not appeal the jurisdictional/dispositional order or the order terminating services at the six-month review hearing. Nor did he challenge the order setting a section 366.26 hearing by filing an extraordinary writ.

A party may not, through an appeal of the most recent dependency order, challenge a prior order for which the statutory time for a notice of appeal has expired. (*In re Liliana S.* (2004) 115 Cal.App.4th 585, 589; see *In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1150 ["an unappealed disposition or postdisposition order is final and binding and may not be attacked on an appeal from a later appealable order"].) "[This] rule serves vital policy considerations of promoting finality and reasonable expedition, in a carefully balanced legislative scheme, and preventing late-stage 'sabotage of the process' through a parent's attacks on earlier orders. [Citation.]" (*In re Jesse W.* (2001) 93 Cal.App.4th 349, 355; accord, *Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247, 259.) Thus, settled principles of appellate review and finality generally prevent us from addressing Father's concerns that there was insufficient evidence to support the jurisdictional and removal findings. (*In re Liliana S.*, at p. 589; *In re Megan B.* (1991) 235 Cal.App.3d 942, 950; *In re Elizabeth M.* (1991) 232 Cal.App.3d 553, 563.)

Father acknowledges these general principles. But he contends that under rule 5.590, and under the court's recent decision in *In re A.O.* (2015) 242 Cal.App.4th 145 (*A.O.*), his appellate challenges to the jurisdictional and dispositional orders are not barred because he was not properly advised of his appellate rights after entry of those orders.

In *A.O.*, the mother appealed from orders after the six- and 12-month review hearings and she challenged the disposition order. (*A.O.*, *supra*, 242 Cal.App.4th at p. 147.) She did not file a timely appeal from the dispositional order, but argued that her challenge should be heard because the court failed to advise her of her right to appeal when the disposition hearing concluded, as required by rule 5.590(a). (*A.O.*, at p. 147.) Rule 5.590(a) provides: "If at a *contested* hearing on an issue of fact or law the court finds that the child is described by Welfare and Institutions Code section 300, 601, or 602 or sustains a supplemental or subsequent petition, the court after making its disposition order . . . must advise, orally or in writing, the child, . . . and, if present, the parent or guardian of: [¶] (1) The right of the child, parent, and guardian to appeal from the court order if there is a right to appeal; [¶] (2) The necessary steps and time for taking an appeal; [¶] (3) The right of an indigent appellant to have counsel appointed by the reviewing court; and [¶] (4) The right of an indigent appellant to be provided with a free copy of the transcript." (Italics added.) In *A.O.*, this court agreed with the mother's position in that case, concluding that the failure to advise the mother of her appellate rights as required by rule 5.590(a) was "a ' "special circumstance[] constituting an excuse

for failure to [timely appeal]." ' [Citation.]" (*A.O.*, at p. 149.) The court then considered the mother's challenge to the jurisdictional/dispositional order as an extraordinary writ petition. (*Ibid*.)

Recently, in *In re A.A.* (2016) 243 Cal.App.4th 1220 (*A.A. II*), this court rejected a mother's claim that she was excused from timely appealing a disposition order due to a lack of notification of appellate rights. There, the mother was not present at the time of the jurisdictional hearing. (*A.A. II*, at pp. 1229, 1236.) The mother's counsel did not object to the submission of the agency's reports into evidence, but counsel objected to the allegations in the petitions that the mother had not caused her children severe emotional damage. (*Id*. at pp. 1229-1230.) The agency argued that the mother was not entitled to notice of her right to appeal the disposition order because "(1) the jurisdictional hearing was not 'contested'; and (2) mother was not 'present' at the hearing." (*Id*. at p. 1235.) This court rejected the agency's first argument, concluding that although the mother's counsel agreed to submit the case on the agency's reports and did not offer affirmative evidence, these actions did not constitute a waiver of appellate rights. (*Id*. at p. 1236.) We concluded that the mother " 'contest[ed]' the jurisdictional findings for purposes of rule 5.590(a)" given the objection to the allegations in the petition. (*Ibid*.) However, we went on to hold that because the mother was not present at the jurisdictional hearing, she was not entitled to notice of her right to appeal, since under rule 5.590(a), the parent, " '*if present*,' " is entitled to written or oral notice of his or her right to appeal. (*A.A. II*, at p. 1236.)

Here, the record shows that Father was present for the jurisdictional/dispositional hearing on August 11, 2015. And the record does not show that Father was given written or oral notice of his appellate rights. However, our decisions in *A.O.* and *A.A. II* are distinguishable from the present case. Here, Father did not contest jurisdiction and removal. Instead, he waived his right to a contested hearing. In fact, the juvenile court addressed Father at the hearing and confirmed that he was waiving his right to a contested hearing. And, after directly examining Father, the court found Father knowingly, intelligently, and voluntarily waived his constitutional rights to a contested hearing. Moreover, Father did not object to the allegations in the petition. Rather, Father's counsel clarified some errors in the social worker's report and requested that Father's drug testing not interfere with his employment and that postpartum depression be addressed in Mother's case plan. Thus, unlike the circumstances in *A.A. II*, *supra*, 243 Cal.App.4th 1220, there was no objection to the allegations of the petitions or to DPSS's recommendations.

Under these circumstances, we conclude this was not a "contested hearing on an issue of fact or law" (rule 5.590(a)) that would have triggered the notice requirements of rule 5.590(a). Therefore, Father's reliance on *A.O.*, *supra*, 242 Cal.App.4th 145 and *A.A. II*, *supra*, 243 Cal.App.4th 1220, is misplaced, and he is barred from challenging the jurisdiction and removal orders entered after the jurisdictional/dispositional hearing. (*In re Liliana S.*, *supra*, 115 Cal.App.4th at p. 589.)

III

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ
P. J.

We concur:

HOLLENHORST
J.

MILLER
J.